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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,436	06/23/2003	Peter Hinsperger	3061-40.1A CIP	6285

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EXAMINER	
VALENTI, ANDREA M	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/600,436	HINSPERGER, PETER	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 July 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 10/075,280.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,605,007 to Hinsperger in view of U.S. Patent No. 6,161,362 to Forbis.

Regarding Claim 17, Hinsperger teaches method including a cover (Hinsperger Fig. 1 and Col. 1 line 34) of an open mesh weave of thermoplastic (Hinsperger Col. 3 line 13) material, the weave having warp and weft strips (Hinsperger #7 and 8) forming a substantially thin uniform layer having opposed upper and lower surfaces, the mesh defining individual slits extending through the layer (Hinsperger Fig. 5 #10); a

discontinuous lace coating on the upper one of the opposed surfaces, and a discontinuous lace coating on the lower one of the opposed surfaces (Hinsperger Fig.5 #9 and Col. 3 line 60), and wherein the combined total lace coating coverage of both of the surfaces of the composite covers up to 55% of the total surface area of the open mesh weave material (Hinsperger Col. 3 line 59). Hinsperger inherently teaches that it is juxtaposition to the substrate (Hinsperger Fig. 1). Merely shifting the location of a known device to different locations is an obvious modification of one of ordinary skill in the art since the device is moved for storage, it can be moved to provide coverage for different area depending on plant needs, etc. and does not present a patentably distinct limitation.

Hinsperger teaches that the lace coatings are on both surfaces and can be colored (Hinsperger Col. 3 line 18 and 44-45) and inherently has some heat reflecting or heat absorbing properties do to the color and the properties of the selected material, but is silent explicitly teaching one lace coating being heat reflecting lace and the second lace coating being heat absorbing lace. However, Forbis teaches that it is old and notoriously well-known in the art of textile coverings to provide heat reflecting and heat absorbing properties on alternating sides of the cover via different pigmentations (Forbis Col. 4 line 8-15). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of colors for the enhanced thermal properties taught by Forbis.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,605,007 to Hinsperger in view of and U.S. Patent No. 6,161,362 to Forbis as applied to claim 17 above, and further in view of Canadian Patent CA 1131512 to Stall.

Regarding Claims 18, 19, and 20, Hinsperger does not explicitly teach that each of the discontinuous lace coatings being present on each of said opposed surfaces to an extent whereby between 35%-60% or between 35%-40% of each of the surfaces is covered by the respective lace coating or that the combined total surface coverage by both coatings is between 55%-80%. However, Stall teaches a thermoplastic fabric with lace coatings with ranges of surface coverage for the lace coating one each side including 35% (Stall page 3 line 3-6). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the desired percentage is easily obtainable through routine tests and experimentation to arrive at an optimum percentage for the particular application, i.e. providing the desired level of breathability (air and moisture circulation) to the underlying surface for optimum growing conditions and plant variety needs.

Claims 1 and 3-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,605,007 to Hinsperger in view of Canadian Patent CA 1131512 to Stall and U.S. Patent No. 6,161,362 to Forbis.

Regarding Claims 1, 3, 4, 13, 14, and 15, Hinsperger teaches a cover (Hinsperger Fig. 1) of an open mesh weave of thermoplastic (Hinsperger Col. 3 line 13)

material, the weave having warp and weft strips (Hinsperger #7 and 8) forming a substantially thin uniform layer having opposed upper and lower surfaces, the mesh defining individual slits extending through the layer (Hinsperger Fig. 5 #10); a discontinuous lace coating on the upper one of the opposed surfaces, and a discontinuous lace coating on the lower one of the opposed surfaces (Hinsperger Fig.5 #9 and Col. 3 line 60), and wherein the combined total lace coating coverage of both of the surfaces of the composite covers up to 55% of the total surface area of the open mesh weave material (Hinsperger Col. 3 line 59).

Hinsperger does not explicitly teach that each of the discontinuous lace coatings being present on each of said opposed surfaces to an extent whereby at least 35%, or between 35%-60%, or between 35%-40% of each of the surfaces is covered by the respective lace coating. However, Stall teaches a thermoplastic fabric with lace coatings with ranges of surface coverage for the lace coating one each side including 35% (Stall page 3 line 3-6). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the desired percentage is easily obtainable through routine tests and experimentation to arrive at an optimum percentage for the particular application, i.e. providing the desired level of breathability (air and moisture circulation) to the underlying surface for optimum growing conditions and plant variety needs.

Hinsperger teaches that the lace coatings are on both surfaces and can be colored (Hinsperger Col. 3 line 18 and 44-45) which inherently has some heat reflecting or heat absorbing properties do to the color and the properties of the selected material,

but is silent on explicitly teaching one lace coating being heat reflecting lace and the second lace coating being heat absorbing lace. However, Forbis teaches that it is old and notoriously well-known in the art of textile coverings to provide heat reflecting and heat absorbing properties on alternating sides of the cover via different pigmentations (Forbis Col. 4 line 8-15). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of colors for the enhanced thermal properties taught by Forbis.

Regarding Claim 5, Hinsperger as modified teaches the plastic material forming the strips of the composite is polyolefin (Hinsperger Col. 3 line 14).

Regarding Claim 6, Hinsperger as modified teaches the polyolefin is a polyethylene and the coating is a polyethylene compatible with the polyethylene strip (Hinsperger Col. 3 line 13-14 and line 44-45).

Regarding Claims 7 and 8, Hinsperger as modified teaches coating includes a black coloring agent of a wavelength having heat absorption properties (Forbis Col. 4 line 13).

Regarding Claims 9 and 10, Hinsperger as modified teaches the coating includes a white coloring agent of specified wavelength having heat reflective properties (Forbis Col. 4 line 10).

Regarding Claim 11, Hinsperger inherently is the size to cover grass substrate.

Regarding Claim 12, Hinsperger teaches the cover secured over the substrate (Hinsperger Fig. 1).

Regarding Claim 16, Hinsperger as modified teaches the coating is extruded onto the open mesh weave (Hinsperger Col. 3 line 49).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,605,007 to Hinsperger in view of Canadian Patent CA 1131512 to Stall and U.S. Patent No. 6,161,362 to Forbis as applied to claim 1 above, and further in view of U.S. Patent No. 5,729,929 to Burke.

Regarding Claim 2, Hinsperger as modified is silent on the thickness of the coating on each side having a thickness of at least 0.5 mil. However, Burke teaches that it is old and notoriously well-known to manufacture ground covers with multiple layers of thickness of at least 0.5 mil (Burke col. 7 line 60-65). It would have been obvious to one of ordinary skill in the art to modify the teachings of Hinsperger with the teachings of Burke at the time of the invention since the modification is merely a change in size to achieve certain manufacturing cost parameters and does not present a patentably distinct limitation.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant does not positively claim grass in any of the independent claims and Hinsperger '007 teaches that it is known to use textile covers over grass Hinsperger '007 Col. 1 line 34). In particular applicant is merely claiming a 'substrate' which by definition can take on many forms.

Forbis was cited merely to illustrate that it is old and notoriously well-known in the textile industry to vary the color of a geotextile to control thermal properties for a desired effect. The modification to Hinsperger is merely the selection of desired colors for known thermal results since Hinsperger teaches that the lace coating is colored. Examiner would like to point out that U.S. Patent No. 5,070,643 to Hinsperger in fact teaches that the lace coating is white (Col. 3 line 11) and thus teaches a lace coating with heat reflecting properties.

Examiner maintains that the claims are not patentably distinguished over the teachings of the cited prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Patent Examiner
Art Unit 3643

15 September 2004

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600